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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

11 | In re DMCA Subpoena to Discord Inc.

MISC CASE NO 3:25-mc-80091

12 **DECLARATION OF JAMES D.**
13 **BERKLEY IN SUPPORT OF DMCA**
14 **SUBPOENA TO DISCORD INC.**
15 **PURSUANT TO 17 U.S.C. § 512(H)**

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17 I, James D. Berkley, declare as follows:

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19 1. I am an attorney at law, duly licensed to practice law in the State of California and
20 before this Court. I am employed as Special Counsel at the law firm Mitchell Silberberg &
21 Knupp, LLP (“MSK”). MSK is counsel for Nintendo of America Inc. (“NOA”). NOA’s exclusive
22 rights under copyright include, without limitation, copyright-protected artwork, source code,
23 characters, and other materials related to the famous Pokmon franchise, including but not limited
24 to videogames developed in connection with the Pokmon franchise, such as the videogame
25 *Pokmon Legends: Arceus* (the “Pokmon Game Materials”).

26 2. MSK is authorized to act on NOA's behalf in the protection of copyrights and/or
27 exclusive rights possessed by NOA pertaining to the Pokémon Game Materials.

1 3. NOA is requesting the attached proposed subpoena that would order Discord Inc.
2 ("Discord") to disclose the identity, including the name(s), address(es), telephone number(s), and
3 e-mail address(es), of the user "GameFreakOUT" (ID: 1294732540057227357), who is
4 responsible for posting content infringing the Pokémon Game Materials, including confidential
5 materials not released to the public, that appeared at the Discord server titled "FreakLeak" (the
6 "Infringing Server"). The purpose for which this subpoena is sought is to obtain the identity of the
7 Discord user "GameFreakOUT," who posted infringing content that appeared at the Infringing
8 Server.

9 4. The information obtained will be used only for the purposes of protecting the rights
10 granted to NOA under the Copyright Act.

11 5. Under 17 U.S.C. § 512(c)(3)(A), NOA submitted a takedown notice to Discord
12 identifying the infringing content posted by the infringing user(s) and providing the information
13 required by 17 U.S.C. § 512(c)(3)(A). A true and accurate copy of the submitted notification is
14 attached hereto as **Exhibit 1**.

15 I declare under penalty of perjury under the laws of the United States of America that the
16 foregoing is true and correct to the best of my knowledge, information and belief.

17 Executed in Los Angeles, California on April 18, 2025.

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/s/ James D. Berkley

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James D. Berkley

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EXHIBIT 1



MITCHELL SILBERBERG & KNUPP LLP
A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

James D. Berkley
A Professional Corporation
(310) 312-3717 Phone
(310) 312-3100 Fax
jdb@msk.com

April 18, 2025

VIA E-MAIL ONLY (COPYRIGHT@DISCORD.COM)

Copyright Agent
Discord Inc.
Attention: DMCA Takedown Request
444 De Haro Street #200
San Francisco, CA 94107

Re: **Notice of Infringement Submitted Pursuant to 17 U.S.C. Section 512**

To Whom It May Concern:

I submit to you the following statement pursuant to section 512 of Title 17 of the U.S. Code and inform you that Mitchell Silberberg & Knupp LLP is authorized to act on behalf of Nintendo of America Inc. (“Nintendo”). Nintendo owns exclusive rights in and to copyright-protected artwork, characters, source code, and other materials related to the famous Pokémon franchise, including but not limited to videogames developed in connection with the Pokémon franchise, such as the videogame *Pokémon Legends: Arceus* (collectively, the “Pokémon Game Materials”).

It has come to our attention that materials infringing the Pokémon Game Materials, including confidential materials unreleased to the public, have been made available by the Discord user “GameFreakOUT” (ID: 1294732540057227357) in the Discord server “FreakLeak” (server ID: 1294765091828535430, hereinafter the “Infringing Server”). An example of posts by this user sharing infringing Pokémon Game Materials is shown—with confidential information redacted—in the attached Exhibit A and includes the materials identified below:

- Server ID: 1294765091828535430
- Channel ID: 1297281750921121873
- Message ID: 1296664146976309349
- File ID: 1294765091828535433

We request that Discord take expeditious action to ensure the removal or disabling of access to the materials referenced above, as well as any other materials infringing the Pokémon Game Materials available on the Infringing Server. Additionally, we request that Discord take appropriate measures to prevent further infringements by the user in question, and any other parties responsible for the infringement, including pursuant to Discord’s Terms of Service and any “repeat infringer” policies maintained by Discord.



Copyright Agent
Discord, Inc.
April 18, 2025
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I hereby state that I have a good faith belief that the use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law. Additionally, I hereby state that the information in this notification is accurate, and under penalty of perjury, that I am the owner, or an agent authorized to act on behalf of the owner, of an exclusive right that is being infringed.

We appreciate your cooperation in this matter.

All of our client's rights are expressly reserved.

Sincerely,

A handwritten signature in black ink, appearing to read "JDB".

James D. Berkley
Attorney-at-Law for
MITCHELL SILBERBERG & KNUPP LLP

JDB
Enclosure



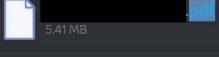
Copyright Agent
Discord, Inc.
April 18, 2025
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EXHIBIT A

👉 Rique actually if PLA leaks I wonder if we can find *these* specific slides on it

GameFreakOUT 10/18/2024 2:40 AM

It doesn't reming me a file, but enjoy one about [REDACTED]

 5.41 MB

🔥 3

Unfortunately, I didn't got much documents for the recent-era games, they were on confluence and their export tool were dead (could not download backups of confluence space more than 1GB)

👉 3

We could have gotten them if we had a little more time inside, it was our next planned dump to get.